IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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UNITEDHEALTH GROUP, INC.,	
Individually, and on behalf of all others	
similarly situated,	: C.A. No
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Plaintiff,	\$
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V.	į.
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GLAXOSMITHKLINE, LLC,	
GLAXOSMITHKLINE HOLDINGS	ą
(AMERICAS) INC.,	
Defendants.	\$

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1332(d), 1441, 1446, and 1453, Defendants

GlaxoSmithKline LLC and GlaxoSmithKline Holdings (Americas) Inc. (collectively, "GSK"),

by their undersigned attorneys, hereby remove this putative class action from the Philadelphia

County Court of Common Pleas to the United States District Court for the Eastern District of

Pennsylvania. Because this lawsuit is brought on behalf of a putative class, this Court has

jurisdiction over this action pursuant to 28 U.S.C. § 1332(d). As grounds for removal, GSK

states as follows:

1. On December 23, 2010, Plaintiff UnitedHealth Group, Inc. ("UHG") filed (1) a Praecipe to Issue Writ of Summons, and (2) Pre-Complaint Interrogatories ("Interrogatories") in the Philadelphia County Court of Common Pleas, in the civil action styled UnitedHealth Group, Inc. v. GlaxoSmithKline LLC, December Term 2010, Case No. 2871. A true and correct copy of the Praecipe and Interrogatories is attached hereto as Exhibit A.

- On January 28, 2011, GSK timely removed this action to the United States
 District Court for the Eastern District of Pennsylvania.
- 3. On April 18, 2011, the United States District Court for the Eastern District of Pennsylvania remanded the action to the Philadelphia Court of Common Pleas on the grounds that removal was premature because UHG had only filed a writ of summons and pre-complaint interrogatories.
- 4. Upon remand, UHG filed a motion to compel responses to its precomplaint discovery, and at oral argument on the motion, held May 16, 2011, UHG reaffirmed on the record that it is bringing its claims as a class action and specified its four causes of action against GSK. A true and correct copy of the portion of the argument transcript ("Tr.") containing these record statements is attached as Exhibit B. (Tr. 4)
- 5. UHG's claims are for recovery of health care expenses paid for treatment of conditions allegedly caused by GSK's prescription medications Avandia and Paxil as follows: (1) subrogation; (2) reimbursement (which UHG conceded to be a claim against an insured, and not GSK); (3) under the Employee Retirement Income Security Act of 1974 ("ERISA"), § 502 (a)(3) (codified at 29 U.S.C. § 1132 (a)(3)); and (4) under the Medicare Secondary Payer Act ("MSP Act"), 42 U.S.C. § 1395y(b)(5). (Tr. 4-11)
- 6. This Court has subject matter jurisdiction over UHG's action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d) ("CAFA"), and exclusive federal jurisdiction under the Employee Retirement Income Security Act of 1974 ("ERISA"), § 502 (a)(3) (codified at 29 U.S.C. § 1132 (a)(3)); 28 U.S.C. § 1331 (federal question).

I. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

- This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b).
 UHG first specified its causes of action on May 16, 2011.
- 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a), because the Philadelphia County Court of Common Pleas is located within the geographic boundaries of the United States District Court for the Eastern District of Pennsylvania. 28 U.S.C. § 118(a).
- 9. In accordance with 28 U.S.C. § 1446(d), GSK will file promptly a copy of this Notice of Removal with the Philadelphia County Court of Common Pleas. GSK has served all parties with a copy of this Notice of Removal.

II. THIS COURT HAS FEDERAL JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT

- This Court has subject matter jurisdiction over this action pursuant to
 CAFA. See 28 U.S.C. §§ 1332, 1453, 1711-15.
- 11. This action is not one described in 28 U.S.C. §§ 1332 or 1453 as non-removable, and no statutory exception to CAFA jurisdiction applies in this case. See 28 U.S.C. §§ 1332(d)(4)(A), (d)(4)(B).
- 12. Under CAFA, federal courts have original jurisdiction over class actions where the putative class contains at least 100 members; any member of the putative class is a citizen of a State different from that of any Defendant; and the amount in controversy exceeds \$5 million in the aggregate for the entire class, exclusive of interest and costs. *See* 28 U.S.C. §§ 1332(d)(2), (d)(5)(B), and (d)(6).
 - 13. This action satisfies all requirements for federal jurisdiction under CAFA.

A. Numerosity Exists

14. The putative class contains at least 100 class members. UHG has commenced this class action against GSK on behalf of itself and all "similarly situated health plans." (Tr. 4, 45, 62). According to the American Association of Health Plans, of which UHG is a member, there are at least 1,300 health plans in the United States. CAFA's requirement of class numerosity is therefore satisfied. *See* 28 U.S.C. § 1332(d)(5)(B).

B. Minimal Diversity of Citizenship Exists

- addressing diversity of citizenship in actions not considered class actions, *i.e.*, 28 U.S.C. § 1332(a), the citizenship of an LLC is that of "the State where it has its principal place of business and the State under whose laws it is organized." *See Steel City Group v. Global Online Direct, Inc.*, 2006 U.S. Dist. LEXIS 83622, at *5 (W.D. Pa. Nov. 16, 2006) (quoting 28 U.S.C. § 1332(d)(10)). GSK is an LLC formed under the laws of Delaware. For purposes of CAFA, GSK has its principal place of business in Philadelphia, Pennsylvania.
- 16. There is diversity of citizenship because UHG is a Minnesota corporation with its principal place of business in Minnetonka, Minnesota. (*See* UnitedHealth Group, Inc., Annual Report (Form 10-K), at 1 (Feb. 10, 2010)).

C. The Amount in Controversy Is Satisfied

17. The amount in controversy exceeds \$5 million in the aggregate for the entire class, exclusive of interest and costs.

¹ The sole member of GSK LLC is GlaxoSmithKline Holdings (Americas) Inc., a Delaware corporation with its principal place of business in Wilmington, Delaware.

- 18. Private insurers such as UHG provide insurance coverage for approximately two-thirds of the population of this country. (See Press Release, United States Census Bureau, Income, Poverty and Health Insurance Coverage in the United States: 2009, Sept. 16, 2010 (noting that 194.5 million Americans have private insurance)).
- 19. Upon information and belief, a substantial percentage of the claimants who filed suit in the Avandia litigation and the Paxil Pregnancy litigation are privately insured.
- 20. UHG's claims for treatment costs in connection with Avandia exceed \$5 million. UHG asserted in connection with its pursuit of discovery that its and the other health plans' claims are for heart attacks, strokes, and other complications arising from the use of Avandia. The medical costs of hospitalization associated with these conditions are substantial and can easily exceed \$10,000 per person. In 2004, the Department of Health and Human Services concluded that the mean cost of hospitalization alone was \$16,200 for heart attack patients, \$11,100 for stroke patients, and \$9,400 for CHF patients. (See Dep't of Health and Human Servs., Agency for Healthcare Research and Quality, Hospital Stays for Circulatory Diseases, 2004).
- 21. Even if treatment costs totaled \$10,000 per person, the \$5 million amount in controversy would be met if there were only 500 Avandia claimants nationwide who experienced heart attacks, strokes, or other complications and who were covered by UHG or any of the putative class members. Given that UHG intends to bring a putative class action involving at least 100 other health plans, each of which has hundreds, if not thousands of members, the number of Avandia claimants to whom UHG is asserting that it is subrogated will be much higher.

- Pregnancy litigation. These claimants' suits are for various prenatal heart defects, ranging from mild to severe. Treatment of birth defects can cost hundreds of thousands of dollars over a lifetime. For example, a study by the American Heart Association relying on statistics from 2003 found that the average cost of hospitalization *alone* for treatment of hypoplastic left heart was \$199,587, and for treatment of transposition of the great arteries ("TGA") was above \$150,000. (See Am. Heart Ass'n, Heart Disease and Stroke Statistics: 2010 Update At-A-Glance, at 19). In other words, even assuming that hospitalization costs had not risen in the last eight years, only 35 claimants alleging defects like hypoplastic left heart or TGA would place UHG's purported class claims and the amount in controversy well over \$5 million.
- 23. As demonstrated above, UHG's Avandia and Paxil-related claims on behalf of the class will therefore involve an amount above \$5 million.
- 24. Accordingly, CAFA's amount in controversy requirement is satisfied. See 28 U.S.C. § 1332(d)(2) and (d)(6).
- 25. Because CAFA confers federal subject matter jurisdiction over this action, removal of this action to this Court is proper pursuant to 28 U.S.C. §§ 1441 and 1453.

III. THIS COURT HAS FEDERAL JURISDICTION UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

- 26. This Court has exclusive federal jurisdiction over UHG's ERISA claim. 29 U.S.C. § 1132(e)(1).
- 27. Because ERISA confers exclusive federal jurisdiction over UHG's recovery claim, removal of this action is proper pursuant to 28 U.S.C. §§ 1441 and 1331.

WHEREFORE, for the reasons set forth above, GSK requests that this Court assume full jurisdiction over this action as provided by law.

Nina M. Gussack (Pa. Bar No. 31054) Anthony C.H. Vale (Pa. Bar No. 28139) Kenneth H. Zucker (Pa. Bar No. 38418) PEPPER HAMILTON LLP

PEPPER HAMILTON LLP 3000 Two Logan Square 18th and Arch Streets Philadelphia, PA 19103-2799 (215) 981-4000

Attorneys for Defendant

Dated: June 15, 2011

CERTIFICATE OF SERVICE

I hereby certify that, on June 15, 2011, I served a true and correct copy of the foregoing Notice of Removal upon the following via electronic means and will also be placing a copy in the U.S. Mail, First Class postage prepaid:

Richard W. Cohen, Esq.
Gerald Lawrence, Esq.
Peter D. St. Phillip, Esq.
LOWEY DANNENBERG COHEN & HART, P.C.
Four Tower Bridge
200 Barr Harbor Drive, Suite 400
West Conshohocken, PA 19428

Attorneys for Plaintiff

Kenneth H. Zucker

Exhibit A

Court of Common Pleas of Philadelphia County Trial Division

Civil Cover Sheet

 For Prothonotary	Use	Only	(Docket	Number

DECEMBER 2010

Filing Number: 1012038381

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NAME OF PLAINTIFF'S/PETITIONER'	S/APPELLANT'S ATTORNEY	(H) (F) (F) 25 (H) (F)	ADDRESS				
GERALD LAWRENCE,	JR.		200 BARR)R		
PHONE NUMBER	FAX NUMBER		SUITE 40		PA 19428		
(610) 941-2760	(610)862-9	777	mas r con	SHOHOCKER	. tu 13479		
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FINAL COPY (Approved by the Prothonotary Clerk)

COMMERCE PROGRAM ADDENDUM TO CIVIL COVER SHEET

This case is subject to the Commerce Program because it is not an arbitration matter and it falls within one or more of the following types (check all applicable):

Crescies	1.	officers, directors, corporations, partne professional associa not limited to any ac	the internal affairs or governance, dissolution or liquidation, rights or obligations owners (shareholders, partners, members), or liability or indemnity of managers managers, trustees, or members or partners functioning as managers) of business erships, limited partnerships, limited liability companies or partnerships, ations, business trusts, joint ventures or other business enterprises, including but ections involving interpretation of the rights or obligations under the organic law Corporation Law), articles of incorporation, by-laws or agreements governing such
X	2.	Disputes between or relationships or con- relationships and co	r among two or more business enterprises relating to transactions, business tracts between or among the business enterprises. Examples of such transactions, ntracts include:
		(1)	Uniform Commercial Code transactions;
		(2)	Purchases or sales of business or the assets of businesses;
	X	(3)	Sales of goods or services by or to business enterprises;
		(4)	Non-consumer bank or brokerage accounts, including loan, deposit cash management and investment accounts;
		(5)	Surety bonds;
			Purchases or sales or leases of, or security interests in, commercial, real or personal property; and
		(7)	Franchisor/franchisee relationships.
	3.	Actions relating to the	rade secret or non-compete agreements;
	4.	"Business torts," suc prospective contract	th as claims of unfair competition, or interference with contractual relations or ual relations;
	5.	Actions relating to in	ntellectual property disputes;
	6.	Actions relating to se	ecurities, or relating to or arising under the Pennsylvania Securities Act;
	7.	Derivative actions ar consumer class actio	nd class actions based on claims otherwise falling within these ten types, and ns other than personal injury and products liability claims;
	8.	Actions relating to co	orporate trust affairs;
15.5	9.	Declaratory judgmen by insureds, where th Comprehensive Gene	at actions brought by insurers, and coverage dispute and bad faith claims brought ne dispute arises from a business or commercial insurance policy, such as a eral Liability policy;
	10.	is a business or comr	fication claims against insurance companies where the subject insurance policy nercial policy and where the underlying dispute would otherwise be subject to am, not including claims where the underlying dispute is principally a personal

EFS #1012038381

By: GERALD LAWRENCE, Esq. Assessment of Damages Hearing email: glawrence@lowey.com Identification No. 69079 | | IS |X| IS NOT REQUIRED LOWEY DANNENBERG COHEN & HART, P.C. FROTHONOTARY -| | JURY |X| NON FERY Four Tower Bridge for Subrogation and Doclaratory Relief 200 Barr Harbor Drive, Suite 400 West Conshohocken, PA 19428 Phone: 610-941-2760 Attorneys for Plaintiff UNITEDHEALTH GROUP, INC. 9900 Bren Rd. Minneapolis, MN 55440-1459 PHILADELPHIA COUNTY individually and on behalf of COURT OF COMMON PLEAS similarly situated health plans, **Trial Division** Plaintiffs, DECEMBER TERM, 2010 NO. V. GLAXOSMITHKLINE, L.L.C., and GLAXOSMITHKLINE HOLDINGS (AMERICAS) INC., One Franklin Plaza Philadelphia, PA 19101 Defendants.

PRAECIPE TO ISSUE WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons in the above-captioned matter, upon payment of your costs only.

By: __/s/ Gerald Lawrence
Richard W. Cohen, Esq. (I.D. No. 55485)
Gerald Lawrence, Esq. (I.D. No. 69079)
Peter D. St. Phillip, Esq. (I.D. No. 70027)
LOWEY DANNENBERG COHEN & HART, P.C.
Four Tower Bridge
200 Barr Harbor Drive, Suite 400
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Phone: 610-941-2760

Phone: 610-941-2760 Fax: 610-862-9777

Email: glawrence@lowey.com

Of Counsel:

RAWLINGS AND ASSOCIATES Mark D. Fischer, Esq. Jeffrey C. Swann, Esq. Robert C. Griffith, Esq. 1 Eden Parkway LaGrange, Kentucky 40031

Telephone: (502) 587-1279 Facsimile: (502) 584-8580

Attorneys for Plaintiff, UnitedHealth Group, Inc.

By: GERALD LAWRENCE, Esq. email: glawrence@lowey.com Identification No. 69079 LOWEY DANNENBERG COHEN & HART, P.C. Four Tower Bridge 200 Barr Harbor Drive, Suite 400 West Conshohocken, PA 19428 Phone: 610-941-2760 Attorneys for Plaintiff UNITEDHEALTH GROUP, INC. PHILADELPHIA COUNTY individually and on behalf of COURT OF COMMON PLEAS all others similarly situated, Trial Division Plaintiffs, **DECEMBER TERM, 2010** NO. GLAXOSMITHKLINE, L.L.C., GLAXOSMITHKLINE HOLDINGS (AMERICAS) INC., JOHN DOE Defendants.

PRE-COMPLAINT INTERROGATORIES

Pursuant to Rule 4003.8 of the Pennsylvania Rules of Civil Procedure, Plaintiff
UnitedHealth Group, Inc. ("United"), on behalf of itself and similarly situated health plans,
serves these Pre-Complaint Interrogatories on Defendants GlaxoSmithKline, L.L.C. and
GlaxoSmithKline Holdings (Americas) Inc. (collectively, "GSK"). The Pennsylvania Rules of
Civil Procedure allow for pre-complaint discovery "where the information sought is material and
necessary to the filing of the complaint and the discovery will not cause unreasonable
annoyance, embarrassment, oppression, burden or expense to any person or party." Pa. R. Civ.
P. 4003.8(a). Available discovery under Rule 4003.8 includes, but is not limited to, the
Interrogatories served herein. See Pa. R. Civ. P. 4001(c), 4005(a).

UNITED'S CLAIMS

United, like most health insurers and health benefit plan administrators in the United States, provides medical expense coverage to its members under agreements where such members authorize United to pursue claims for subrogation and reimbursement. The right to subrogation, which arises when a tortfeasor causes a plan member to suffer injury requiring medical treatment that was paid for by the plan, allows the plan to stand in the shoes of the member to bring a claim directly against the tortfeasor for the cost of that medical treatment. In addition to this contractual right, many states, including Pennsylvania, recognize an equitable right to subrogation even in the absence of plan language extending that right to a health plan. See, e.g., Valor v. Pa. Emps. Benefit Trust Fund, 939 A.2d 312, 319-320 (Pa. 2007). The right to reimbursement, which arises when a member is injured by a tortfeasor and subsequently receives compensation from the tortfeasor for his or her injury, allows the plan to recover its medical expenses directly from the member or others who come into possession of the settlement funds, such as the member's attorney.

GSK is currently defending over 13,000 personal injury and products liability claims brought by current and former users of Avandia, Avandaryl, and Avandamet (collectively, "Avandia"). Avandia is a prescription drug used for the treatment of type-2 diabetes mellitus. Avandia side effects have included a range of adverse health outcomes, including congestive heart failure, strokes, and heart attacks. People who claim to have been injured by Avandia ("Avandia Claimants") include plaintiffs in federal and state courts (including this Court), and others who have signed tolling agreements with GSK. In July 2010, it was widely reported that GSK had settled an unknown number of Avandia-related claims for at least \$460 million. United and other similarly situated health plans have no access to the identities of these settling Avandia Claimants.

GSK is also a named defendant in at least 800 personal injury and products liability suits brought by former users of Paxil, an antidepressant prescription drug and has entered into tolling agreements with an unknown number of people who claim they have been injured by Paxil ("Paxil Claimants"). Paxil side effects have included birth defects in newborns of mothers who were treated with the drug during their first trimester. According to press reports, GSK settled the majority of these cases this year. United and other similarly situated health plans have no access to the identities of these settling Paxil Claimants.

United, on behalf of itself and similarly situated health plans, intends to sue GSK and other defendants, seeking (a) a declaratory judgment regarding the status of health plans' subrogation and reimbursement rights; (b) recovery from GSK in subrogation of their expenses of treating the adverse health outcomes their members experienced associated with Avandia; and (c) reimbursement from their health plan members who were Avandia Claimants or Paxil Claimants and settled their Avandia or Paxil claims. However, it is impossible for United to draft its complaint without knowing the identity of the Avandia Claimants and the Paxil Claimants who have (a) sued GSK; (b) signed tolling agreements with GSK; or (c) settled with GSK. Accordingly, with these two Interrogatories, United seeks to identify these Avandia Claimants and Paxil Claimants, as well as their respective attorneys.

INSTRUCTIONS

The two interrogatories request identification of Paxil Claimants and Avandia Claimants.

Please provide answers to these interrogatories in Excel spreadsheets or other searchable electronic format.

DEFINITIONS

"Avandia" includes the drugs Avandia, Avandamet, and Avandaryl.

"Avandia Claimant" includes anyone who has (a) sued GSK in state or federal court alleging that Avandia injured him or her or anyone else whom the plaintiff claims the right to represent with respect to the assertion of Avandia-related injury claim; (b) entered into an agreement with GSK that either tolled or resolved his or her (or the person's he or she claims the right to represent) Avandia-related claims against GSK.

"GSK" includes GlaxoSmithKline, L.L.C., GlaxoSmithKline Holdings (Americas) Inc., and any of their affiliates and subsidiaries.

"Paxil Claimant" includes anyone who has (a) sued GSK in state or federal court alleging that Paxil injured him or her or anyone else whom the plaintiff claims the right to represent with respect to the assertion of any Paxil-related injury claim; (b) entered into an agreement with GSK that either tolled or resolved his or her (or the person's he or she claims the right to represent)

Paxil-related claims against GSK.

INTERROGATORIES

- 1. Identify (a) the first name, last name, last known address, social security number and date of birth of all Avandia Claimants and any persons such Avandia Claimants purport to represent, as well as the name of any and all health plans that covered each Avandia Claimant and any persons such Avandia Claimants purport to represent and all member identification numbers assigned by each health plan for each Avandia Claimant and any persons such Avandia Claimants purport to represent; and (b) the first name, last name, firm name, and last known address of these Avandia Claimants' respective legal counsel.
- 2. Identify (a) the first name, last name, last known address, social security number and date of birth of all Paxil Claimants and any persons such Paxil Claimants purport to represent, as well as the name of any and all health plans that covered each Paxil Claimant and

any persons such Paxil Claimants purport to represent and all member identification numbers assigned by each health plan for each Paxil Claimant and any persons such Paxil Claimants purport to represent; and (b) the first name, last name, firm name, and last known address of these Paxil Claimants' respective legal counsel.

DATE: December 23, 2010

By: __/s/ Gerald Lawrence
Richard W. Cohen, Esq. (I.D. No. 55485)
Gerald Lawrence, Esq. (I.D. No. 69079)
Peter D. St. Phillip, Esq. (I.D. No. 70027)
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Email: glawrence@lowey.com

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Telephone: (502) 587 1279

Telephone: (502) 587-1279 Facsimile: (502) 584-8580

Attorneys for Plaintiff, UnitedHealth Group, Inc.

Exhibit B

		1				3
					1	United vs. GlaxoSmithKline - 5/16/2011
1				09:57:59AM	2	THE COURT: Who's here for United
2	OF PHILADELPHIA	COUNTY		09 58 02AM	3	Health Group?
3	CIVIL TRIAL DI			09 58 02AM	4	MR. LAWRENCE: Good morning, Your
5				09 58 02AM	5	Honor. Gerald Lawrence for United Health
6		DECEMBER TERM, 2010		09 SR DSAM	6	Care.
7	Vs.			09 58 13AM	7	MR. VALE: Anthony Vale from Pepper,
9	GLAXOSMITHKLINE LLC and GLAXOSMITHKLINE	NO. 2871		09 58 16AM	8	Hamilton and my colleague, Ken Zucker, is
9				00 56 18AM	9	with me. David (?) from King and
10	1			19 56 72 AM	10	Spalding and James Barger, Aylstock,
11		-		09.58.27AM	11	Witkin. He represents the plaintiff,
12	exches Additions			09.58 30AM	12	steering committee in the Avandia
14		room 246		09:58:34AM	13	litigation; so if Your Honor has any
15	Philadelphia, Pen			IN SKINGAM	14	questions on the plaintiff's position on
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18	B E P O R E:			09 58 59AM		here and I don't know what it means. See
19	THE HONORABLE MARK I. BERNST	TEIN		09 58 03AM		if settled. Then it says not settled.
20						THE COMPLETE OF THE CONTROL OF THE C
21		nun enen		MAJO 66 00		MR. LAWRENCE: I don't believe it's
22	Official Court	Reporter		09 58 10AM		our note.
24	Maureen.mccarthy@cour			09:59:11AM		MR. VALE: There's no current
25	i			39 55 12AM	22	negotiations.
				09:59 14AM	23	THE COURT: I don't know who wrote
				NASE 66 PG	24	that. Mr. Lawrence?
				09 59 27AM	25	MR. LAWRENCE: This is a Motion to
1		2				4
2	APPEARANCES:				1	United vs. GlaxoSmithKline - 5/16/2011
3	LOWEY, DANNEBERG, CO	THEN & HART PC		09 59 21MM	2	Compel discovery. I'd like to review the
3	BY: GERALD LAWRENCE			09 59-42AM	3	standards for precomplaint discovery,
4	Four Tower Bridge	CONTRACTOR AND WORK		DB 59-44AM	4	explain why we need them. We discussed
5	200 Barr Harbor Drive, S West Conshohocken, PA			l .	E .	
	610-941-2760			09.59-46AM	5	this at some length with the defendant so
6				09 59 46AM	6	this at some length with the defendant so I'd like to anticipate their arguments.
7	glawrence@lower.com			AN OCCUPANTAL OF		**************************************
				39 50 48AM		I'd like to anticipate their arguments.
121	PEPPER, HAMILTON LLP BY: ANTHONY VALE, ES	5 223		00 50 484M 00 50 62AM	6 7	I'd like to anticipate their arguments. By way of background, we filed this
8	PEPPER, HAMILTON LLP BY: ANTHONY VALE, ES BY: KENNETH H. ZUCKE	5 223		19 59 48AM 00 59 52AM 00 59 57AM 00 59 57AM	6 7 8 9	I'd like to anticipate their arguments. By way of background, we filed this matter as a writ in that December. We
	PEPPER, HAMILTON LLP BY: ANTHONY VALE, ES	5 223		39 59 48 AM 09 59 52 AM 00 59 57 AM 00 59 59 AM 10 00 01 AM	6 7 8 9	I'd like to anticipate their arguments. By way of background, we filed this matter as a writ in that December. We promptly served in December a
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9	PEPPER, HAMILTON LLP BY: ANTHONY VALE, ES BY: KENNETH H. ZUCKE 3000 Two Logan Square 18th and Arch Streets Philadelphia, PA 19103-2 215-981-4000	R, ESQ.		29/50-48AM 09/98/22AM 09/58/57AM 09/58/57AM 19/80/07AM 10/80/07AM 10/80/07AM	6 7 8 9 10 11 12	I'd like to anticipate their arguments. By way of background, we filed this matter as a writ in that December. We promptly served in December a precomplaint discovery. The basis for this is that my client, United Health Care, is a large health insurance company. The defendants
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1 of 31 sheets Page 1 to 4 of 83 05/17/2011 12:07:57 PM

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have a right to recovery of the monies which we have paid for their health care as a result of the alleged negligence of the defendants.

The statutory and case law authority for precomplaint discovery is McNeil versus Jordan. What that case says is that we are required to demonstrate good faith as well as probable cause that the information sought is material and necessary to the filing of the complaint.

In these circumstances, Your Honor, United Health Care and other payers would have potentially four different causes of action to recover for the monies which they spent for the health care of the persons that were harmed by Avandia; the first of which is plaintiff subrogation.

Subrogation, simply put, is the payer, the insurer, standing in the shoes of the victim to recover money that the insurer paid for the health care at issue.

There's contractual subrogation; but

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also in Pennsylvania, statutory subrogation that was established by the Supreme Court in 2007 or 2008 in the PBTF case, it was Vadoya versus the PBTF.

What that case says is that even if there is not a specific contractural right for health plans to seek payment from third sources for its expenses, as an equitable matter in Pennsylvania, under Pennsylvania law, if you've made these expenditures, you have a right to recover from the tort-feasor.

In addition to the subrogation claim, Your Honor, we would have a reimbursement claim. Reimbursement is a similar type claim, although the right of recovery would be to be reimbursed by the insured who's made a recovery from GSK. We also have rights -- I see a puzzled look on Your Honor's face.

We also, we have a right of recovery under the ERISA statute which, in its simplest form to explain that right, there's a United States Supreme Court

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case called Sereboff a few years ago. 2 10 07 4468

What Sereboff says is that where you have 3 10:02:4784

an ERISA plan who has expended money to 10:02 49AM

cover health care costs on behalf of one 5 10 02 53AM

of its members, and the member recovers

from a third-party and there's a fund of 7 10:02 57AM assets available to pay claims to the 8

9 member, that you have a right under ERISA to make that recovery. ERISA has an

10 02 05AM 10 effective subrogation claim. 10 00 14AM 11

> You could say that it doesn't use the word "subrogation" but that's the effect of it.

THE COURT: That's a way of thinking about --

MR. LAWRENCE: Absolutely. That would be consistent with the holding of same.

And the fourth way we think we have a right to recover is to the extent that some of the plans which our client has here are Medicare Plus choice plans which is where a person who's Medicare eligible enrolls in a private plan from United,

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and the Government pays the premium for that plan or the majority of the premium for the plan.

Sometimes individuals pay additional premiums to get a different level of service, but the Government pays essentially for them to be in a private plan rather than Medicare.

Under the Medicare statutes, there's a right to charge, which is a tort feasor or another person who would be liable for payments to make the recovery.

We have actually filed for another client, for Humana, a case down the street at the Federal courthouse, attempting to recover under the Medicare Secondary Payor Act for those claims which we have paid with respect to Avandia claimants; and we interestingly had a motion to dismiss argument on that case about a week ago, ten days ago; and Mr. Semitis, who's not here but is Mr. Vale's partner and Mr. Zucker, was there during this argument, was asked by the

11 1 United vs. GlaxoSmithKline - 5/16/2011 United vs. GlaxoSmithKline - 5/16/2011 Court, after he acknowledged that there subrogation, both contractual subrogation 2 2 10 D4 44AM 10/06/24AM is a right under the Medicare Act to and the Commonwealth right of equitable 3 3 subrogation that we're afforded in 4 recover, but that the dispute was whether TO DE SOAM there's a Federal claim, it should be Pennsylvania. 5 5 10 DE 334M 10'G457AM pursued in Federal Court. And at an absolute minimum, we've 6 10.06 345M The judge, Laughlin, I think, made a showing as required in McNeil 7 versus Jordan that there's probable cause rightfully --8 8 THE COURT: It's a Federal statute? 9 to bring these claims. Under McNeil 9 It can't be enforced in Federal Court? 10 DE 45AM 10 versus Jordan, we then also have to show 10 10:06 GAM 11 the reasonableness, if you will, in MR. LAWRENCE: That was the point 10:05:06AN 11 she's taken; and in fairness, there is discovery that we're seeking. 12 10:06:47AM 12 10.05 (17.14) some disparity of interpretation of the And I think what we're seeking is 10 96 47AM 13 10:05:05AM 13 very narrow. We're asking for the case law on that; and whether the right 10 05 12AM 14 10 W SIEM 14 to recover is limited only to the Federal 10:06 52АМ 15 identity of the persons who have either 10 25 TEAN 15 sued the defendants, the persons who have government for the standard Medicare Act 10 06 SHAM 16 10:05-15AM 16 or whether a client, such as my client, entered into tolling agreements to the 10:06 57AM 17 10 DE 17AM 17 statutes; they don't have to bring a 10 05 70AV 18 who have these advantage plans will be 15 07 07AM 18 able to recover. 10 07 09AM 19 claim and, third, the identities of those 10.05.74AM 19 1007 11AM 20 who actually settled claims with the But in response to the judge's 10'05 24AN 20 question, do they have any recourse in 10 07 13AM 21 defendants. 10:05:2KAM 21 The reason that we need that is that any event to make these chargebacks? 10 07 13AM 22 10 05 28AM 22 Because it's clear under the statute and 10 07 15AM 23 in order to bring these subrogation 10 05 30AM 23 10 05 31AM 24 they concede under the statute there's a 10 07 17AM 24 claims or the other claims that we 10 07 25AM 25 discussed, we have to identify on whose 10 06 33AU 25 right for chargeback. Mr. Semitis said, 10 United vs. GlaxoSmithKline - 5/16/2011 United vs. GlaxoSmithKline - 5/16/2011 1 2 yes, they have recourse, Your Honor. 2 behalf we're pursuing the claim. NO DE NEAM 10 07 TSAM 3 We're not here to define the scope of the 3 Now, we know with respect to a small 10-07-24834 number of claimants that we were able to rights that supported them under the 4 10:07:21AM 4 Medicare Advantage Act. identify United States Health Care 5 5 There was something there. They are 6 members who we believe may have filed 6 10'07 35AM 10:05-42AM 7 allowed to charge. How far that goes and 7 lawsuits. We can't identify them with 10.07.37446 what that means is for another day; but certainty because there could be more 10 07 39AM 9 that right, like any Federal right that 13.07.626M 9 than one Mark Bernstein in the City of is created without a specific Federal 10 07 MAM 10 Philadelphia who filed a lawsuit; so we 10 remedy can be enforced under state law. think there's some, but we don't know, 10 00 02AM 11 10 07 45AM 11 The Court followed up. Was this a and that's really why we need discovery 10 05 54AN 12 10 07 SIAM 12 matter of contract? Mr. Semitis from so that we can pursue claims against them 10 07 SOAM 13 10 00 08AM 13 10 05 58AM 14 Pepper said: As a matter of contract or 10:07 SIAM 14 to recover these funds. 10 07 STAM 15 Now, they've raised a number of state law with respect to subrogation 10:06:01AU 15 rights. I mean, there's a lot of common defenses and objections, as you might 10 06 07AH 16 10 XIT SHAM 16 law that, indeed, there was some right 10:08:01AM 17 think, although I will note, they never 10:06:03AM 17 afforded a right to charge. We want to responded to the discovery. We served 10 матан 18 10 38 ОЗАМ 18 19 10 DE BRAM see how that plays out and, actually, this discovery in December. They removed 10:08 ОНАМ 19 10/06 12AM 20 brought an appropriate forum. 10 DR G7AM 20 the case from the 29th day, the day before the discovery response was due at 10 00 13AM 21 I think that all but concedes that 10 08 10AM 21 10:00 16AM 22 we have state law right of action at a 10 OF 14AM 22 Federal Court on the writ. You look minimum for those Medicare claims. I somewhat shocked. 10 DB 18AM 23 10 08 16AM 23 10 0E 21AM 24 think we have a state law right of action 1938 17AM 24 THE COURT: There's no requirement

10 OS 18AW 25

to respond to discovery precomplaint.

for the other reasons that I've said for

10 06 25AM 25

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1	United vs. GlaxoSmithKline - 5/16/2011	1	United vs. GlaxoSmithKline - 5/16/2011
10.40.15AM 2	I'll call you back as soon as I can.	12 10:03Рм 2	plead an otherwise valid subrogation
10:40:15AM 3		12 10 BBPM 3	claim?
10 40 15АМ 4	(Recess.)	12-10-08Рм 4	MR. VALE: Yes, Your Honor. Maybe I
12 08 075% 5		12.10.11PM 5	can distinguish two situations; one where
12 06 OTF/M 6	THE COURT: Mr. Lawrence, I'm not	12:10:12FM 6	they might have.
12.08 OMPM 7	following this. Your client is United	12:10:13PM 7	THE COURT: On what basis can I
12:08:12PM 8	Health Group?	12.10.15PM 8	possibly reject their Interrogatory to
12.08 15596 9	MR. LAWRENCE: That's correct.	12 10 19FM 9	get some names, however narrow, if you
12.08.1594 10	THE COURT: And your class is United	12 10:25РМ 10	think they need that to properly file a
1708 17PM 11	Health Group and similarly situated	12 10 2799s 11	claim?
12:08:1999 12	Health Plans; right?	12 10 370м 12	MR. VALE: Well, Your Honor, with
12 DH 21PM 13	MR. LAWRENCE: That's correct.	12 10 29РМ 13	respect to people who have asserted a
12 08 22PM 14	THE COURT: Why do you need the	12 10 33PM 14	claim against GSK and with whom we have
12 08 23Ры 15	names of any insured? I don't mean	12 10 36РМ 15	settled, Your Honor, they have no
12:08:25PM 16	insured, any settler.	12 10 39РМ 16	subrogation right because the claims
12.08.2774 17	MR. LAWRENCE: In order to comply	12 10 40РМ 17	already been
12 DR 25PM 18	with the pleading requirements for the	12 10 41Рм 18	THE COURT: Your hypothetical is
12 ОВ 2009 19	subrogation cases, we need to establish	12 10 40РМ 19	different from mine, and if you continue
чговчани 20	the identity of the person who is our	12 10 45РМ 20	doing that, I will assume that the reason
12 OR 46PM 21	insured who has been a victim of their	12 10 40PM 21	you're doing that is because there is no
12.01.5494 22	conduct.	12 10 49РМ 22	answer to the question that I'm asking.
12.08.54FM 23	THE COURT: How did you do that in	12 18 51 PM 23	If you're saying, as you just said,
12 08 56FM 24	Federal court for Humana?	12 10 55РМ 24	that in order to properly plead a
12:00 деры 25	MR. LAWRENCE: That was one of the	12 10 бири 25	subrogation claim of any sort, otherwise
	46		48
1	46 United vs. GlaxoSmithKline - 5/16/2011	1	
	The state of the s	1 22,1104PM 2	48
1	United vs. GlaxoSmithKline - 5/16/2011		48 United vs. GlaxoSmithKline - 5/16/2011
1 1209 05PM 2	United vs. GlaxoSmithKline - 5/16/2011 deficiencies they were attempting to	12 11 04РМ 2	48 United vs. GlaxoSmithKline - 5/16/2011 valid, they need names of people, how can
1 1200 04Pha 2 1200 04Pha 3	United vs. GlaxoSmithKline - 5/16/2011 deficiencies they were attempting to underline with our complaint.	12 11 104РМ 2	48 United vs. GlaxoSmithKline - 5/16/2011 valid, they need names of people, how can I reject their precomplaint discovery
1 12.09 (MPM 2 12.09 (MPM 3 12.09 (MPM 4	United vs. GlaxoSmithKline - 5/16/2011 deficiencies they were attempting to underline with our complaint. What we were able to do with Humana	22,1104PM 2 12,1110PM 3 12,1113PM 4	48 United vs. GlaxoSmithKline - 5/16/2011 valid, they need names of people, how can I reject their precomplaint discovery asking for the names of people in the
1 12 00 08598 2 12 00 08598 3 12 00 10594 4 12 00 13598 5	United vs. GlaxoSmithKline - 5/16/2011 deficiencies they were attempting to underline with our complaint. What we were able to do with Humana is similar to what we were able to do	12 11 DAPM 2 12 11 DAPM 3 12 11 DAPM 4 12 11 DAPM 5	48 United vs. GlaxoSmithKline - 5/16/2011 valid, they need names of people, how can I reject their precomplaint discovery asking for the names of people in the category?
1 12:08:08PM 2 12:08:08PM 3 12:08:10PM 4 12:09:13PM 5 12:08:13PM 6	United vs. GlaxoSmithKline - 5/16/2011 deficiencies they were attempting to underline with our complaint. What we were able to do with Humana is similar to what we were able to do with United Health, was to identify by	1211104PM 2 1211104PM 3 1211113PM 4 1211114PM 5	United vs. GlaxoSmithKline - 5/16/2011 valid, they need names of people, how can I reject their precomplaint discovery asking for the names of people in the category? MR. VALE: Because, Your Honor, the
1 12 00 00 PM 2 12 00 00 PM 3 12 00 10 PM 4 12 00 13 PM 5 12 00 13 PM 7	United vs. GlaxoSmithKline - 5/16/2011 deficiencies they were attempting to underline with our complaint. What we were able to do with Humana is similar to what we were able to do with United Health, was to identify by doing some docket matchings persons with	12.11 04PM 2 12.11 04PM 3 12.11 13PM 4 12.11 13PM 5 12.11 13PM 6 12.11 13PM 7	United vs. GlaxoSmithKline - 5/16/2011 valid, they need names of people, how can I reject their precomplaint discovery asking for the names of people in the category? MR. VALE: Because, Your Honor, the precomplaint they are not entitled to
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1 12 09 09 09 09 09 09 09 09 09 09 09 09 09	United vs. GlaxoSmithKline - 5/16/2011 deficiencies they were attempting to underline with our complaint. What we were able to do with Humana is similar to what we were able to do with United Health, was to identify by doing some docket matchings persons with particular names; and based upon the identifying information we had that we suspect were persons who had asserted claims in the Humana case, we sent them a	121104PM 2 1211104PM 3 1211134PM 4 1211114PM 5 1211114PM 6 1211134PM 7 121123PM 8 121123PM 9	United vs. GlaxoSmithKline - 5/16/2011 valid, they need names of people, how can I reject their precomplaint discovery asking for the names of people in the category? MR. VALE: Because, Your Honor, the precomplaint they are not entitled to precomplaint discovery in order to obtain this information. THE COURT: They are entitled to precomplaint discovery in order to get
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61 63 United vs. GlaxoSmithKline - 5/16/2011 United vs. GlaxoSmithKline - 5/16/2011 2 billing codes that are indicative that 2 names. 12:27:27PM THE COURT: No. I forced them to they're in an accident. 3 3 We have a right to get the medical admit that, but I posited everything else 13:27:29PM 12:25 OIPM records. We're then able to get those is good and they don't think anything 5 5 12:27:33PM 12 25 02PM medical records and determine they went else is good; right? 6 6 1217 SIDM to the hospital and said they were in the MR. VALE: I don't want to 7 12:27 36PM car crash and so on and so forth. interrupt, but I do want to address the 8 8 Here, the vast majority of the names 9 subrogation point. 9 12:27 41PM 12:25:12PM 1225 13PM 10 we seek are people who haven't filed a 12 37 43PM 10 THE COURT: They're not admitting that. They haven't conceded anything. complaint; so we can't even identify who 12:27 KIPM 11 1225-15PM 11 they are other than to send a letter to 17.27 49PM 12 MR. LAWRENCE: If you read the 12 25 17PW 12 McNeil versus Jordan case, Your Honor, all the millions of people that are in 1237 HIPM 13 12 25 19FM 13 1227 49PM 14 we're not here on preliminary objections. our system. 14 That's the standard they want to impose With respect to the 50 to 75 that I 12 27 51Рм 15 1225 21PM 15 talked about earlier, in the event that on us. 12 25 2574 16 1227 SSPM 16 They want us to have to win we can reach out and contact them, we can 12775ФМ 17 12:29 33PM 17 12:25:34PH 18 do that and they could choose to comply 12.27.54PM 18 preliminary objections that we have a with us or not to comply with us. 1227:57Pt 19 claim that they won't give us the 19 12 27 50PM 20 information to file in order to move But oftentimes, these claims are for 12 25 SSFM 20 forward. 17.25 44FM 21 activities that took place many, many 12.78.01PM 21 years before. The persons are no longer THE COURT: Let's look at your 12.25 WE'M 22 12.28 01PM 22 in our plans in many instances. We no Interrogatories. Can we? 12 25 41FM 23 12 79 83PM 23 1278 0494 24 MR. LAWRENCE: Yes, Your Honor. 122h 500m 24 longer have their current addresses and we are frustrated in our ability to do 12 28 BSPM 25 They're attached to our moving papers, I 12 2th 525 to 25 62 United vs. GlaxoSmithKline - 5/16/2011 United vs. GlaxoSmithKline - 5/16/2011 1 believe, as Exhibit 1. They're Exhibit 2 that. 2 12.28 GRPM The other thing, somebody can take 3 A, Your Honor. 3 12:28:20PM Avandia while they're in our plan. Let's Your Honor, we explain the claims we 4 4 just make it year 2004. They leave our want to set forth, which is required in 5 5 12 29 02PM 12:28:03PM plan and go on to another plan. By the the statute. We actually get to the 6 6 12 29 04PM time they have a cardiac event, they're Interrogatories on page four. There's 7 7 19 29 BEPM in somebody else's plan. So for them, we just two Interrogatories. We ask for 8 12:29:08PM 9 wouldn't have a right of subrogation. 9 first name, last name, last known 12.29 13PM But then it works the other way. address. 12.29 13PM 10 12 20 14FM 10 THE COURT: Let me read it. Somebody who's in our plan in 2007 has a 12.29-14PM 11 1228 1694 11 You're asking for the attorneys' 12.24 19PM 12 heart attack. 12 30 14PM 12 12 30 16PM 13 information as well; right? 12 28 19PM 13 THE COURT: Wait a minute. You say individually and on behalf of similarly 12 30 17Рм 14 MR. VALE: Both, Your Honor, that's 12 26 26PM 14 12 26 28PM 15 situated health plans? 12.30 THPM 15 correct. MR. LAWRENCE: That's correct. THE COURT: And the attorneys' 12 30 20PM 16 12:20:29FM 16 122830PW 17 THE COURT: You're asking eventually 12 30 22PM 17 information, to a large extent, can be gotten through a search of the dockets of for me or some Federal judge to certify a 12 30 25PM 18 17 26 30PM 18 mass tort and through Judge Ruth's class of health insurers? 12:20 attent 19 12 30 20PM 19 MR. LAWRENCE: Eventually, we hope dockets, whatever they are, and are not 12 26 43PW 20 12.30.33PM 20 needed for your complaint. Are they? to be able to get to that point. It's a 12 30 35PM 21 12 25 HAPPA 21 12.27 THPM 22 cart before the horse argument. 12 30 37PM 22 MR. LAWRENCE: That's correct, not 12272104 23 They admit that if they had the 12 30 38PM 23 needed for the complaint. names, we can make those claims. They 12.30.30PM 24 THE COURT: The objections to that 12 27 22Рм 24 part of your Interrogatories are have the names and refuse to give us the 12 30 42РМ 25 12 27 28PM 25